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PTO/SB/33 (07-05)

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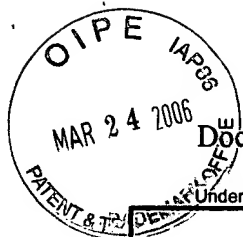
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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional)	
<p>I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]</p> <p>on <u>MARCH 21, 2006</u></p> <p>Signature <u>Elizabeth Eiche</u></p> <p>Typed or printed name <u>Elizabeth Eiche</u></p>		Application Number	Filed
		09/858,187	May 15, 2001
		First Named Inventor	
		Joseph L. Rudolph	
		Art Unit	Examiner
		3643	Richard Thomas Price, Jr.
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <p><input type="checkbox"/> applicant/inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>41,592</u></p> <p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</p> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p> <p><input type="checkbox"/> *Total of _____ forms are submitted.</p>			

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

65379-9001-02

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on MARCH 21, 2006Signature Elizabeth EicheTyped or printed name Elizabeth Eiche

Application Number

09/858,187

Filed

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Joseph L. Rudolph

Art Unit

3643

Examiner

Richard Thomas Price, Jr.

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I am the

☐ applicant/inventor.☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)☒ attorney or agent of record.
Registration number 41,592☐ attorney or agent acting under 37 CFR 1.34.
Registration number if acting under 37 CFR 1.34 _____

Signature

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Typed or printed name

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Telephone number

3/21/06

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☐ *Total of _____ forms are submitted.

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Application Number: 09/858,187
Remarks Submitted With Request For Pre-Appeal Review Dated March 21, 2006
Attorney Docket No. 65379-9001-02

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
Group Art Unit 3643

In re

Patent Application of

Joseph L. Rudolph

Application No. 09/858,187

Confirmation No.: 9485

Filed: May 15, 2001

Examiner: Richard Thomas Price, Jr.

“FREE STALL DIVIDER”

Mail Stop AF

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

I, Elizabeth Eiche, hereby certify that this correspondence is being deposited with the US Postal Service as first class mail in an envelope addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA, 22313-1450, on the date of my signature.

Elizabeth Eiche

Signature

3/21/2006

Date of Signature

REMARKS SUBMITTED WITH REQUEST FOR PRE-APPEAL REVIEW

This paper is filed with a Pre-Appeal Request for Review and a Notice of Appeal, is in response to the Office action mailed October 21, 2005 in the above-referenced patent application, and is filed within two months of the three-month shortened statutory period set for response to the Office action. The Applicant hereby petitions for a two-month extension of time to file these Remarks and the accompanying Notice of Appeal and Pre-Appeal Request for Review, and requests that the extension of time fee and the Notice of Appeal fee be charged to Deposit Account No. 13-3080.

On page 2 of the final Office action dated October 21, 2005, claims 39-41, 43, 44, 46-49, 51, 52, and 54-63 are rejected for a second time under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,111,770 issued to Weelink (hereinafter, “Weelink”).

A. No prima facie case of anticipation

The Applicant respectfully submits that claims 39-41, 43, 44, 46-49, 51, 52, and 54-63 are novel and patentable over Weelink.

Claim 39 of the present application calls for:

A free stall divider for dividing an open area into separate stalls having respective stall spaces for animals, the free stall divider comprising:

a base substantially aligned with a head space for the heads of two facing resting animals; and

two dividing elements coupled to the base, each dividing element coupled to the base by a mounting portion, the dividing elements extending away from each other, away from the head space, and along stall spaces of two adjacent stalls.

Claim 47 of the present application calls for:

A free stall divider for dividing an open area into separate stalls having respective stall spaces for animals, the free stall divider comprising:

a substantially horizontally extending base substantially aligned with a head space for the heads of two facing resting animals; and

two dividing elements coupled to the base, the dividing elements extending away from the base and alongside the stall spaces of two stalls in facing relationship with one another.

Claim 55 of the present application calls for:

A free stall divider assembly for animals, comprising:

a substantially horizontally-extending base having two opposite sides defining two facing stall spaces for two facing resting animals, the base substantially aligned with a headspace for the heads of the two facing resting animals;

a leg coupled to the base; and

a divider coupled to the leg, the divider extending into the opposite sides of the base and alongside the two facing stall spaces.

As described in greater detail in the application as originally filed, some embodiments of the present invention provide a free stall divider for stall spaces for two facing and resting animals. The free stall divider can comprise a base substantially aligned with the head space for two facing resting animals, and two dividing elements coupled to the base; or a base substantially aligned with the headspace for the heads of two facing resting animals, a leg coupled to the base, and a divider coupled to the leg. In some embodiments, the divider or dividing elements extend along the stall spaces of adjacent stalls and/or extend alongside the stall spaces of two facing stalls for facing and resting animals. The dividing elements can extend away from each other

and from the head space of the facing and resting animals and/or can extend away from the base. Also, the divider can extend into an area on opposite sides of the base.

In contrast, Weelink discloses a cubicle partition 1 for a dairy cow, wherein each cubicle partition has a bent rail 5, a cross pipe 6, and standing legs 2, 3 welded to a mounting plate 4. The bent rail 5, standing legs 2, 3, and mounting plate 4 are adapted specifically for dividing a space into single stalls for animals, rather than into double stalls for two facing resting animals as claimed in claims 39, 47, and 55.

The locations of the shoulder bar 22 and head bar (not numbered) of the Weelink cubicle partition 1, and the shape of the partitions 15 (see FIG. 3) are suitable for a dairy cow positioned between adjacent partitions 1, 15, but are certainly not suitable for two facing animals – whether resting or otherwise. The mounting plate 4 of the Weelink partition 1 (compared by the Examiner to the base claimed in claims 39, 47, and 55) is in no way aligned with the head space of two facing dairy cows as claimed in claims 39, 47, 55, or even with the head space of a single dairy cow, because the Weelink partition is not adapted for such applications. Instead, the head space in the Weelink partition is located fully at an end of the rails 5 as shown in FIGS. 1 and 3 of Weelink. Also, the rail 5 of each Weelink partition extends only alongside a stall space of a single dairy cow, or between stall spaces of side-by-side dairy cows. In contrast, the free stall divider claimed in claims 47 and 55 has dividing elements that extend alongside two facing stall spaces (for two facing resting animals). As discussed above, the Weelink partition is not adapted for and cannot be utilized to define such stall spaces.

The Examiner argues that the above remarks regard claim language which is only functionally claimed in claims 39, 47, and 55, that it is possible that two facing animals can use the device of Weelink, and that therefore the remarks presented above do not patentably distinguish the claimed invention over Weelink.

The Applicant respectfully disagrees. Each of claim 39, 47, and 55 call for a base substantially aligned with the head space for two facing resting animals. This positional relationship of the base with respect to animals in the free stall divider or free stall divider

assembly at least partially defines the structural and positional relationship of elements claimed in claims 39, 47, and 55 with respect to one another, including the relationship of the base to the claimed dividing elements and divider coupled thereto. The mounting plate 4 of Weelink (identified by the Examiner as the base claimed in claims 39, 47, and 55) is not aligned with a head space for an animal, and instead is located beside the body of a cow within the stall. If the mounting plate 4 was aligned with a head space for the illustrated cow, the cow would not be in the stall – a result that is counter to the intended operation and function of the Weelink structure. Also, the Weelink partition could not possibly be used for two facing resting animals as suggested by the Examiner because a second facing animal cannot enter the stall defined by the Weelink structure. The head bar (unnumbered, but shown in FIGS. 1 and 3) of the Weelink structure prevents a cow from walking through the stall by blocking the cow at the end of the stall. Therefore, Weelink fails to teach, describe, or suggest a structure that can be used as suggested by the Examiner, nor a free stall divider or free stall divider assembly as claimed in claims 39, 47, and 55.

B. No *prima facie* case of obviousness

The Applicant also respectfully submits that claims 39, 47, and 55 are patentable over Weelink. In addition to the fact that Weelink fails to disclose the free stall divider or free stall divider assembly of claims 39, 47, and 55 as described above, Weelink also fails to provide any suggestion regarding how or why the Weelink structure could be modified to a form comparable to that claimed in claims 39, 47, and 55. To arrive at a free stall divider or free stall divider assembly as claimed in claims 39, 47, and 55, the Weelink structure would have to be modified by removing the head bar, changing the location of the shoulder bar 22, adding a second shoulder bar for the facing stall, and changing the shape of the structure such that the structure proximate the head of the cow in FIG. 3 is substantially longer to accommodate a facing cow (effectively doubling the length of the structure). There is no teaching, suggestion, or motivation anywhere in Weelink or in the other prior art to make such changes, nor why such changes would be necessary or desirable. Indeed, by removing the head bar as mentioned above, the “additional strengthening effect” of the head bar described in column 3, lines 49-52 would be lost – a result that teaches *away* from modifying the Weelink structure to be more relevant to the free stall divider and free stall divider assembly claimed in claims 39, 47, and 55.


The Applicant respectfully submits that claims 39, 47, and 55 are novel and patentable over Weelink and the other prior art. Withdrawal of the 35 U.S.C. §102(b) rejections of claims 39, 47, and 55 is therefore respectfully requested.

Claims 40, 41, 43, 44, and 46; 48, 49, 51, 52, and 54; and 56-63 are each ultimately dependent upon claims 39, 47, and 55, respectively, and are allowable based upon claims 39, 47, and 55, and upon other features and elements claimed in claims 40, 41, 43, 44, 46, 48, 49, 51, 52, 54, and 56-63 but not discussed herein.

C. Conclusion

In view of the foregoing, allowance of Claims 39-41, 43, 44, 46-49, 51, 52, and 54-63 is respectfully requested. The undersigned is available for telephone consultation at the Examiner's convenience.

Respectfully submitted,

By 
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